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Attorneys for Defendants
ARIBA INC. and SAP AMERICA, INC.

**IN THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA**

LUIS MONTOYA, JR., an individual,

Plaintiff,

V.

ARIBA INC., a foreign corporation; SAP AMERICA, INC., a foreign corporation, and DOES 1 through 100, inclusive,

Defendants.

Case No.: 8:22-cv-01861-FWS-JDE

**DEFENDANTS' NOTICE OF
MOTION AND MOTION TO
TRANSFER VENUE PURSUANT
TO 28 U.S.C. §1404(a);
MEMORANDUM OF POINTS
AND AUTHORITIES**

DATE: December 1, 2022
TIME: 10:00 a.m.
DEPT: 10D

JUDGE: Hon. Fred W. Slaughter
COMPLAINT FILED: Sept. 6, 2022

**TO THIS HONORABLE COURT AND TO PLAINTIFF AND HIS
COUNSEL OF RECORD:**

PLEASE TAKE NOTICE that on December 1, 2022, at 10:00 a.m., or as soon thereafter as the matter can be heard, in Courtroom 10D of the United States District Court for the Central District of California, located at 411 West 4th Street, Room 1053, Courtroom 10D, Santa Ana, California 92701-4516, Defendants Ariba

1 Inc. (“Ariba”) and SAP America, Inc. (“SAP”) will move the Court, and hereby do
2 move the Court, for an order transferring this action to the Eastern District of
3 Pennsylvania pursuant to 28 U.S.C. §1404(a).

4 This Motion is based on the following grounds:

- 5 1. The SAP Global Incentive Plan Terms and Conditions for Revenue
6 Generating Roles (and the Addendum for North America, U.S. and
7 Canada, thereto) (“GIP”), to which Plaintiff Luis Montoya, Jr.
8 (“Montoya”) is a party, contains a forum selection clause designating the
9 Eastern District of Pennsylvania as the venue for disputes arising between
10 the parties;
- 11 2. The forum selection clause is valid;
- 12 3. Montoya cannot meet his heavy burden of showing that the Court should
13 ignore the forum selection clause’s mandate that this action proceed in the
14 Eastern District of Pennsylvania; and
- 15 4. The forum selection clause dictates that all claims asserted in this action
16 proceed before the court in the Eastern District of Pennsylvania.

17 This Motion is made following the conference of counsel pursuant to L.R. 7-

18 3. On October 13, 2022, Defendants’ counsel emailed Plaintiff’s counsel about the
19 forum selection clause in the GIP and asked whether Plaintiff would agree to
20 stipulate to the transfer requested in this Motion. Plaintiff’s counsel agreed to meet
21 and confer on the issue prior to Defendants filing the Motion. On October 17,
22 2022, counsel for Defendants and Plaintiff held a telephone conference and
23 discussed the issues in this Motion. Plaintiff’s counsel asked for copies of the GIP,
24 and on October 24, 2022, Defendants’ counsel sent the 2020, 2021, and 2022 GIPs
25 to Plaintiff. As of today’s date, Plaintiff has declined to agree to the transfer and
26 Defendants now proceed in filing this Motion.

27 This Motion is based on this Notice of Motion and Motion, the
28 accompanying Memorandum of Points and Authorities in support thereof, the

1 declaration of Elizabeth Heck filed in support of Defendants' Notice of Removal
2 (ECF Document No. 1-1), the concurrently-filed declarations of Jessica Moreno
3 Rosales and Susan Vickers, Defendants' Request for Judicial Notice and Exhibits
4 thereto, all pleadings, papers and records on file in this action, deemed to be on file
5 or of which this Court may take judicial notice, and upon such further oral
6 argument and documentary evidence as may be presented at the time of hearing.

7 Dated: October 26, 2022

DUANE MORRIS LLP

8
9 By: /s/ Brian L. Johnsrud
10 BRIAN L. JOHNRSRUD
11 Attorneys for Defendants
12 ARIBA INC. and SAP AMERICA, INC.
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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiff Luis Montoya, Jr. (“Plaintiff” or “Montoya”) and his former employer Defendant Ariba Inc., a wholly-owned subsidiary of Defendant SAP America, Inc. (together, “Defendants”), are parties to the SAP Global Incentive Plan Terms and Conditions for Revenue Generating Roles (and the Addendum for North America, U.S. and Canada, thereto) (the “GIP”). The GIP contains a forum selection clause requiring that disputes between the parties, such as the instant one, be brought in the Eastern District of Pennsylvania. In contravention of the clause, Montoya filed suit against SAP in Orange County Superior Court, and Defendants properly removed the action to this Court. Pursuant to 28 U.S.C. §1404(a), Defendants now move the Court for an Order transferring this action to the Eastern District of Pennsylvania.

II. FACTUAL AND PROCEDURAL BACKGROUND

On March 23, 2020, Montoya began working at Ariba Inc. as an SAP Senior Solution Sales Executive. (Compl., ¶ 10; Declaration of Jessica Moreno Rosales (“Rosales Decl.”), Ex. D; Declaration of Susan Vickers (“Vickers Decl.”), ¶ 2.)

Following his acceptance of Ariba’s offer of employment, as a member of SAP’s sales team, Montoya received an email at his work email address with an electronic link to a copy of the GIP, which made him eligible to earn certain incentive compensation. (Rosales Decl., ¶¶ 4-5 and Exs. E-H.) Montoya acknowledged and voluntarily agreed to be bound by the GIP in 2020, 2021, and 2022. (Rosales Decl., ¶¶ 3-6 and Exs. A-H.)

The GIP contains the following, unambiguous forum selection clause:

Any action or proceeding relating to the [GIP], this Addendum and the overall Revenue Generating Incentive Plan and to any agreement relating to the Terms and Conditions, this Addendum and the overall Revenue Generating Incentive Plan ... will be solely brought in the courts located in the Commonwealth of Pennsylvania either in the **United States District Court for the Eastern District of Pennsylvania** or in the Court of Common Pleas of Delaware County

1 ...

2 (Rosales Decl., ¶ 2, Ex. A at p. 57¹ (emphasis added); *see also* Ex. B p. at 59 and
 3 Ex. C at p. 53.) Montoya never asked SAP to remove the forum selection clause
 4 from the GIP, never suggested that he had any question about it (much less any
 5 objection to it), and never sought to negotiate the provision. (Rosales Decl., ¶ 4.)

6 Defendants dispute that Montoya is entitled to any additional compensation,
 7 commission or any other form of remuneration from it (other than what Defendants
 8 have already paid to him). However, Montoya’s claims in his Complaint relate to
 9 the application of the GIP, its addenda, the overall Revenue Generating Incentive
 10 Plan, and “to any agreement relating to the Terms and Conditions.” *See* Complaint.
 11 Specifically, Montoya pleads in the Complaint that:

- 12 • Defendants allegedly failed to pay Montoya a large commission on a
 particular sales deal (the “First Solar deal”) (resolution of which requires
 application of the GIP’s terms and conditions and related quota and
 booking rules incorporated into Montoya’s commission plan), and related
 waiting time penalties for the alleged failure to timely pay the commission
 (Compl., ¶¶ 12-20, 28-35, 45-50);
- 13 • The failure to pay Montoya a large commission on the First Solar deal
 (which was governed by the application of the GIP’s terms and conditions
 and related quota and booking rules incorporated into Montoya’s
 commission plan) was allegedly an unfair business practice (*Id.*, ¶¶ 36-
 44);
- 14 • The alleged failure to pay Montoya a large commission on the First Solar
 deal (which was governed by the application of the GIP’s terms and
 conditions and related quota and booking rules incorporated into
 Montoya’s commission plan) allegedly made Montoya’s voluntary

28 ¹ This page number refers to the numbers printed at the bottom of the pages in the document.

1 resignation a “constructive discharge,” subject to a claim for wrongful
 2 termination (*Id.*, ¶¶ 20, 51-57); and
 3 • Employees of the Defendants allegedly made intentional, fraudulent,
 4 and/or negligent misrepresentations that they did not intend to perform
 5 with regards to a potential commission on the First Solar deal (where
 6 application of the GIP is necessary for resolution of these claims because
 7 the commission plan documents expressly provide that the terms and
 8 conditions of the GIP and related documents govern eligibility for and
 9 calculation of incentive compensation and employees should not rely on
 10 any other assurances) (*Id.*, ¶¶ 16-19, 58-73).

11 If Montoya were entitled to some additional compensation or commission,
 12 the GIP and related documents would govern its amount, when payment must be
 13 made, and all other associated terms and conditions. (Rosales Decl., ¶¶ 2-6, Ex.
 14 A.) Resolution of Montoya’s unfair business practices, tort, and fraud claims also
 15 relate to the GIP because he asserts that promises were made notwithstanding the
 16 GIP’s controlling terms.

17 Despite the mandatory Pennsylvania forum selection clause in the GIP and
 18 the fact that principal custodians and individual with knowledge about documents,
 19 data, and records pertaining to Montoya’s compensation and commissions primarily
 20 reside in Pennsylvania, Montoya filed this action, by which he seeks sales
 21 commissions and other relief, in Orange County Superior Court, which Defendants
 22 properly removed to the Central District of California. (Rosales Decl., ¶ 2, Ex. A,
 23 p. 57; Declaration of Elizabeth Heck in support of Defendants’ Notice of Removal
 24 at ECF Document No. 1-1 (“Heck Decl.”), ¶¶ 3-4; Vickers Decl., ¶ 3.)

25 Thus, consistent with the GIP, Defendants now move to transfer this action to
 26 the Eastern District of Pennsylvania.

27
 28

1 **III. LEGAL ARGUMENT**

2 **A. A Forum Selection Clause Is Enforceable By A Motion To**
 Transfer.

4 Pursuant to 28 U.S.C. §1404(a), SAP moves this Court to transfer the action
 5 to the Eastern District of Pennsylvania. *See, e.g., Atl. Marine Constr. Co. Inc. v.*
 6 *U.S. Dist. Court for W. Dist. of Texas*, 571 U.S. 49, 59 (2013) (holding that a forum
 7 selection clause “may be enforced through a motion to transfer under §1404(a).”)²

8 **B. The Forum Selection Clause Is Valid.**

9 **1. The Forum Selection Clause Is Presumed Valid And**
 10 **Montoya Cannot Meet His Heavy Burden To Overcome**
 This Presumption.

11 A forum selection clause is presumed valid. *M/S Bremen v. Zapata Off-*
 12 *Shore Co.*, 407 U.S. 1, 10 (1972). As the Ninth Circuit has explained:

13 The Supreme Court has identified three grounds for repudiating a
 14 forum selection clause: first, if the inclusion of the clause in the
 15 agreement was the product of fraud or overreaching; second, if the
 16 party wishing to repudiate the clause would effectively be deprived of
 [his] day in court were the clause enforced; and third, if enforcement
 would contravene a strong public policy of the forum in which the suit
 is brought.

17 *Richards v. Lloyd's of London*, 135 F.3d 1289, 1294 (9th Cir. 1998). Thus, [w]hen
 18 a defendant files [a Section 1404(a) motion based upon a forum-selection clause], a
 19 district court should transfer the case unless extraordinary circumstances unrelated
 20 to the convenience of the parties clearly disfavor a transfer.” *Atl. Marine Constr.*
 21 *Co., Inc. v. U.S. Dist. Ct. for W. Dist. Of Tex.*, 571 U.S. 49, 50-51 (2013). Here,
 22 Plaintiff does not address the forum selection clause at all, much less assert that it is
 23 invalid.

28 ² While the forum selection clause also allows Montoya to bring suit in the Court of Common Pleas of Delaware
 County, given the diversity of the parties, this matter should proceed in Federal Court.

- a. **The Forum Selection Clause Is Not A Product Of Fraud Or Overreaching.**

“To establish the invalidity of a forum-selection clause based on fraud or overreaching, Plaintiff must show that the inclusion of that clause in the contract was the product of fraud or coercion. Overreaching includes conduct short of fraud involving undue influence or overwhelming bargaining power.” *Dolin v. Facebook, Inc.*, 289 F. Supp. 3d 1153, 1159 (D. Haw. 2018) (internal citations and quotations omitted). Plaintiff cannot make this showing.

The inclusion of the forum selection clause in the GIP was not the product of fraud or coercion. The clause itself is conspicuous. It is located in the Addendum for North America (found immediately adjacent to the GIP), which specifically applies to U.S. based employees of Ariba and is only 3 pages long. The clause is contained in a stand-alone paragraph directly under the bold font headings “Compliance With Local Laws And Regulations U.S.” Further, the GIP and addenda, complete with the forum selection clause, was presented to Montoya via email link to an online portal. The email and the quota letter both instructed Montoya (in emphasized font) to review the GIP before signing and that his signature was an acknowledgement that he did read the GIP prior to signing. SAP did not place any restrictions on how long Montoya could review and consider the document, and did not demand that he agree to the GIP by any time certain. (Rosales Decl., ¶¶ 2-5, Exs. E and G.) Montoya thus had unfettered access to the document, could consider it outside the presence of anyone at SAP and at his leisure, and cannot credibly claim that the clause was the product of fraud or coercion.

Montoya may argue that the clause is invalid because it was not the product of negotiation or because he is unsophisticated relative to SAP. However, such arguments have been soundly rejected. *See, e.g., Wholesale Am. Mort., Inc. v. Integra Software Sys., LLC*, 2008 WL 2774187 , * 1 (N.D. Cal. 2008) (lack of

education and the fact that an employment contract was not negotiable are insufficient to overcome the strong presumption in favor of enforcing forum selection clauses). The argument fails as to Montoya for the additional reason that Montoya holds himself out to be a “senior account executive” who understood the need to conduct diligence prior to entering into a contract. (Compl., ¶¶ 10, 14-16.) Thus, Montoya cannot now claim that he is unsophisticated to avoid the mandate of the forum selection clause.

b. Enforcement Of The Forum Selection Clause Will Not Deprive Montoya Of His Day In Court.

10 A plaintiff seeking to avoid compliance with a forum selection clause bears a
11 “heavy burden” of showing that trial in the designated venue would effectively
12 deny him a meaningful day in court. *Adema Techs., Inc. v. Wacker Chem. Corp.*,
13 657 Fed. Appx. 661, 663 (9th Cir. 2016) (dismissing case to enforce the parties’
14 forum selection clause which specified Munich, Germany as the forum for
15 disputes). Montoya cannot meet this heavy burden.

16 Pennsylvania is the location where both of Defendants' high-level officers
17 direct, control, and coordinate Defendants' activities and where the majority of the
18 principal custodians of Defendants' corporate documents, data, and records,
19 including incentive compensation plans, payroll records, policies, procedures, and
20 training materials, reside. (Heck Decl., ¶¶ 3-4; Vickers Decl., ¶ 3.) Accordingly,
21 the principal people with the most knowledge about Montoya's incentive
22 compensation and commissions reside and work in Pennsylvania. *Id.*

23 Further, the majority of the decision-makers relative to whether Montoya
24 would receive a commission on the First Solar deal (and the amount of the potential
25 commission or exception commission) reside in locations farther away from
26 California than Pennsylvania, including two in Pennsylvania, and one each in
27 Massachusetts, the United Kingdom, and Sweden. (Rosales Decl., ¶ 7.) All of the
28 SAP employees and witnesses named by Montoya in his Complaint (other than

1 himself) work and reside outside of the Central District of California (in
2 Pennsylvania, Chicago, Illinois, Miami, Florida, and Palo Alto, California). *Id.*
3 The majority of the key decision-makers on SAP’s Compensation Committee also
4 work and reside outside of California (seven members in Pennsylvania,
5 Massachusetts, Texas, Colorado, the United Kingdom, and Sweden and only one
6 member in California). *Id.* Finally, although Montoya worked “remotely” out of
7 his residence in Orange County, California, he was himself based in Palo Alto,
8 California. (Compl., ¶ 4.)

9 Thus, the Central District of California does not bear a significant
10 relationship to this dispute, and transferring this dispute to the Eastern District of
11 Pennsylvania will not deprive Montoya of his day in Court. Indeed, Courts
12 routinely enforce forum selection clauses even when the designated forum is a
13 foreign country. *See, e.g., Adema Techs., supra; Argueta v. Banco Mexicano, S.A.*,
14 87 F.3d 320, 327 (9th Cir. 1996) (affirming the district court's upholding of the
15 forum selection clause, which designated Mexico as the forum for disputes, though
16 the plaintiff claimed that he would be deprived of a meaningful hearing in Mexico
17 due to persecution). Accordingly, Montoya cannot show that enforcing the forum
18 selection clause he agreed to will result in deprivation of his day in court.

c. Enforcing The Forum Selection Clause Does Not Contravene Public Policy, And is Consistent With It.

21 Public interest “factors will rarely defeat a transfer motion” and the “practical
22 result is that forum-selection clauses should control except in unusual cases.” *Atl.
23 Marine*, 571 U.S. at 64. When parties have agreed to litigate disputes in a
24 designated form, public policy is served by upholding their agreement:

When parties have contracted in advance to litigate disputes in a particular forum, courts should not unnecessarily disrupt the parties' settled expectations. A forum-selection clause, after all, may have figured centrally in the parties' negotiations and may have affected how they set monetary and other contractual terms; it may, in fact, have been a critical factor in their agreement to do business together in

1 the first place. *In all but the most unusual cases, therefore, the interest*
 2 *of justice is served by holding parties to their bargain.*

3 *Atl. Marine* at 66 (emphasis added). Nor can Montoya show that a California court
 4 is somehow superior to Pennsylvania in considering his commission (essentially a
 5 contract claim regardless of Montoya pleading the issue as a wage claim), fraud,
 6 and tort claims.

7 This is not the exceptional case where public policy demands that the dispute
 8 proceed where filed rather than in the forum to which the parties previously agreed.
 9 Rather, this is a single-plaintiff employment dispute raising commission-related
 10 claims commonly made by employees against their employers.

11 Further, the dockets in the Central District of California are more congested
 12 relative to those in the Eastern District of Pennsylvania. For example, in the
 13 twelve-month period ending June 30, 2022, judges sitting in the Central District had
 14 significantly more pending cases as their counterparts in the Eastern District of
 15 Pennsylvania. (Request for Judicial Notice (“RJN”), Ex. A.) Thus, as Montoya
 16 presumably wants his day in court, consideration of the courts’ respective dockets
 17 also dictates transfer of this action to the Eastern District of Pennsylvania. *See, e.g.,*
 18 *Ezieme v. Ward Int’l Trading, Inc.*, 2009 WL 2818394, *10 (C.D. Cal. 2009)
 19 (noting that, in ruling on a motion to transfer, courts may “consider the relative
 20 degrees of congestion between the transferor court’s docket to that of the transferee
 21 court” and granting a motion to transfer based on docket congestion and other
 22 factors). Accordingly, public policy does not require this Court to repudiate the
 23 parties’ forum selection clause, but rather, to enforce it.

24 **2. California Labor Code §925 Does Not Void The Forum
 25 Selection Clause.**

26 Montoya may argue that the forum selection clause is void under California
 27 Labor Code §925, which provides, in pertinent part, as follows:

1 (a) An employer shall not require an employee who primarily
 2 resides and works in California, as a condition of employment, to
 3 agree to a provision that would do either of the following:

4 (1). Require the employee to adjudicate outside of California a
 5 claim arising in California.

6 (2) Deprive the employee of the substantive protection of
 7 California law with respect to a controversy arising in California.

8 (emphasis added.)

9 Any such argument fails because acquiescence to the forum selection clause
 10 was not a condition of Montoya's employment. (Rosales Decl., ¶ 2-3, Ex. D.) The
 11 GIP was not even presented to Montoya until after he began working for SAP.
 12 (Rosales Decl., ¶¶ 3-5, Ex. D); *See, also*, RJN, Ex. B, p. 6-7, *Elwell v. SAP*
 13 *America, Inc., et al.*, Case No. 2:17-cv-08314-GW-AFM, (C.D. Cal. February 2,
 14 2018) (Court found plaintiff's reliance section 925 misplaced as there was no
 15 evidence that the GIP qualified as a "condition of employment" agreement); RJN,
 16 Ex.C, p. 11, *Kutty v. SAP America, Inc., et al.*, Case No. 5:19-cv-02473-SVK (N.D.
 17 Cal. November 5, 2019) (finding that section 925 did not apply because Plaintiff
 18 was not required to sign the GIP as a condition of employment).

19 Furthermore, Montoya never raised the issue of the forum selection clause,
 20 never requested to opt out of it, or voiced any concerns whatsoever regarding it.
 21 (Rosales Decl., ¶ 4.) Acceptance of the GIP was not required for Montoya to
 22 remain employed by SAP. (Rosales Decl., ¶¶ 3-4.) The GIP simply provided for
 23 Montoya's ability to earn incentive payments beyond his base salary. *Id.* Thus,
 24 any argument that California Labor Code §925 voids the parties' forum selection
 25 clause necessarily fails, and the Court should enforce the clause.

26 **C. The Court Should Enforce The Valid Forum Selection Clause.**

27 When the parties' agreement contains a valid forum selection clause, "the
 28 plaintiff's choice of forum merits no weight" and courts "should not consider
 arguments about the parties' private interests." *Atl. Marine Constr. Co. Inc. v. U.S.*
Dist. Court for W. Dist. of Texas, 571 U.S. 49, 62-63 (2013). Rather, "a district

1 court may consider arguments about public-interest factors only.” *Id.*, at 64.
 2 Except in the most exceptional circumstances, public interest factors warrant
 3 enforcement of the forum selection clause.

4 The enforcement of a valid forum-selection clauses, bargained for by
 5 the parties, protects their legitimate expectations and furthers vital
 6 interests of the justice system. For this reason, and because the
 7 overarching consideration under §1404(a) is whether a transfer would
 promote the interest of justice, a valid forum-selection clause should
 be given controlling weight in all but the most exceptional
 circumstances.

8 *Atl. Marine Constr. Co. Inc. v. U.S. Dist. Court for W. Dist. of Texas*, 571 U.S. 49,
 9 62-63 (2013) (internal citations and quotations omitted); *see, also*, RJD Ex. B,
 10 *Elwell*, Case No. 2:17-cv-08314-GW-AFM (Court enforced the forum selection
 11 clause in the GIP between plaintiff and defendant, SAP America, Inc., finding that
 12 plaintiff’s arguments were not “nearly enough to establish the ‘rare’ type of
 13 situation that would overcome the parties’ contractually-agreed forum.”) and RJD
 14 Ex. C, *Kutty v. SAP America, Inc., et al.*, Case No. 5:19-cv-02473-SVK (N.D. Cal.
 15 November 5, 2019) (in a single-plaintiff complaint based on the alleged failure to
 16 pay a commission, enforcing the forum selection clause in the GIP between plaintiff
 17 and SAP America, Inc., finding “there is nothing exceptional here which would
 18 warrant disrupting the legitimate expectations of the parties.”).

19 As the party acting in violation of the forum selection clause, Montoya must
 20 bear the burden of showing that public interest factors overwhelmingly disfavor a
 21 transfer of this action. *Id.*, at 67. Montoya cannot meet this burden. Montoya
 22 brings claims commonly asserted by employees against their employers, and his
 23 claims will likely proceed to trial more expeditiously in the Eastern District of
 24 Pennsylvania than they could in this Court. (RJD, Ex. A.) Accordingly, the Court
 25 should enforce the parties’ forum selection clause.

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 28

1 **D. This Action, In Its Entirety, Should Be Transferred To The**
 2 **Eastern District Of Pennsylvania.**

3 The forum selection clause in the GIP is expansive and applies to all causes
 4 of action Montoya attempts to plead, regardless of how he characterizes them. It
 5 covers “[a]ny action or proceeding **relating to** [the GIP], this Addendum and the
 6 overall Revenue Generating Incentive Plan **and to any agreement relating to** [the
 7 GIP], this Addendum and the overall Revenue Generating Incentive Plan.”

8 (Rosales Decl., ¶ 3, Ex. A, p. 57 (emphasis added).) Use of “relating to” in a clause
 9 means that the clause is subject to broad interpretation. *Robles v. Schneider Nat'l*
 10 *Carriers, Inc.*, No. EDCV162482JGBKKX, 2017 WL 8232083, at *3 (C.D. Cal.
 11 Dec. 11, 2017)(the court rejected plaintiff's argument that the forum selection
 12 clause did not apply his misclassification claim under the California Labor Code
 13 and enforced the parties' forum selection clause that broadly governed claims
 14 “relating hereto”); *Scott v. Lopez*, 2013 WL 1182957, *3 (N.D. Cal. 2013) (the
 15 court rejected plaintiff's argument that the forum selection clause applied only to
 16 claims “directly relating to” the agreement and enforced the parties' forum selection
 17 clause as to all claims asserted by the plaintiff, including his tort claims). Thus, in
 18 addition to covering claims on the contract, the forum selection clause also applies
 19 to any claim that is “related to the agreement bearing the clause or raises issues that
 20 require analysis thereof.” *Zako v. Hamilton Co.*, 2016 WL 344883, * 4 (N.D. Cal.
 21 2016).

22 Forum selection clauses plainly apply to the tort and statutory (including the
 23 California Labor Code and California Business & Professions Code) claims
 24 Montoya raises here. *Robles, supra*; *Scott, supra*; *Manetti-Farrow, Inc. v. Gucci*
 25 *Am., Inc.*, 858 F.2d 509, 514 (9th Cir. 1988) (noting that forum selection clauses
 26 “can be equally applicable to ... tort causes of action.”); *Robles v. Comtrack*
 27 *Logistics, Inc.*, 2015 WL 1530510 (E.D. Cal. 2015)(broad “relating to” forum
 28 selection clause applied to California Labor Code claim); *Perry v. AT&T Mobility*

1 LLC, 2011 WL 4080625, at *3 (N.D. Cal. Sep. 12, 2011) (broad “relating to” forum
 2 selection clause applied to California’s Business and Professions Code and Labor
 3 Code claims); *see, also*, RJN, Ex. B, p. 2, *Elwell*, Case No. 2:17-cv-08314-GW-
 4 AFM (transferring contract claim and nine California statutory claims related to
 5 alleged non-payment of commissions); RJN, Ex.C, p. 11-12, *Kutty*, Case No. 5:19-
 6 cv-02473-SVK (transferring contract claim and statutory and tort claims for
 7 discrimination, harassment, fraud, and negligent misrepresentation finding that a
 8 “fair reading” of the plaintiff’s complaint “demonstrates that [p]laintiff’s claims
 9 have a ‘causal connection’ to the non-payment of a substantial commission, one
 10 which Defendant claims is not due under the GIP”).

11 Montoya’s claims, and all of them, plainly relate to the GIP. As Montoya
 12 was a SAP salesperson, the GIP governed various aspects of his employment,
 13 including, crucially, his commission and other incentive payments. At its heart,
 14 Montoya’s Complaint is a claim for an unpaid commission from the First Solar
 15 deal. Though Montoya cloaks his claims as “Failure to Pay Wages” and “Waiting
 16 Time Penalties” generally, these claims are specifically based on the alleged unpaid
 17 commission from the First Solar Deal. (Compl., ¶¶ 12-20.) Even though he does
 18 not bring a contract claim for the unpaid commission (in an obvious attempt to
 19 avoid the GIP’s provisions), his claims and/or elements of them clearly relate to the
 20 GIP and related documents or require application of the GIP and related
 21 documents’ terms, which governed whether he was entitled to the commission and
 22 earned the commission/ wages. *See Oman v. Delta Air Lines, Inc.*, 9 Cal. 5th 762
 23 (2020) (“The compensation owed employees is a matter determined primarily by
 24 contract.”) This is especially the case since the GIP, on its face, indicates that it,
 25 along with information contained in related documents, “fully govern revenue
 26 generating incentive plans.” (Rosales Decl., ¶ 2, Ex. A, §1, p. 4.)

27 Further, Montoya’s unfair business practices, wrongful termination, fraud,
 28 and negligent misrepresentation claims allege in essence that SAP employees gave

1 him assurances about earning commission on a deal with First Solar, he relied on
 2 the assurances and performed work on the deal, Defendants then denied Montoya
 3 the commission, and Montoya resigned his employment in an alleged
 4 “constructive” discharge. (*See, e.g.*, Compl., ¶¶ 12-20, 59, 69.) Specifically:

- 5 • whether Montoya was entitled to receive the commission requires
 application of the GIP and related documents’ terms;
- 6 • whether it was reasonable for Montoya to rely on any oral statements
 about receiving commissions from SAP employees requires
 application of the GIP’s terms, including who had authority to modify
 incentive payments under the plan;
- 7 • whether it was an unfair business practice to determine Montoya did
 not earn a commission on the deal requires application of the GIP; and
- 8 • whether it was an “intolerable” working condition to not receive the
 commission requires consideration of the GIP provisions.

9 Montoya’s subsidiary claim for failure to allow inspection and copying of records
 10 also “relates to” the GIP because the heart of the dispute and the reason for the
 11 request to inspect records related to the alleged unpaid commission on the First
 12 Solar deal. Thus, his statutory and tort claims clearly “relate to” the GIP given
 13 Montoya’s allegations that he should have received the commission and the failure
 14 to pay the commission constituted constructive discharge. (Compl., ¶¶ 12-20.)

15 Accordingly, Montoya’s claims, and all of them, are subject to the forum
 16 selection clause. The Court should therefore grant the instant Motion, transferring
 17 the instant action to the Eastern District of Pennsylvania.

18 **IV. CONCLUSION**

19 For all of the foregoing reasons, Defendants respectfully request that the
 20 Court grant the instant Motion and enter an Order transferring this action, in its
 21 entirety, to the Eastern District of Pennsylvania.

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1 Dated: October 26, 2022
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